

EXHIBIT 5

1 ROBERT HALEY
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

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4 ROBERT FILER,

5 Plaintiff,

6 vs.

14 Civ. 5672(PKC)(LB)

7 THE CITY OF NEW YORK, DETECTIVE

CRAIG BIER, DETECTIVE JAMES

8 ZOZZARO, and OFFICER MATTHEW

VORRARO,

9 Defendants.

10 -----x

11
12 VIDEOTAPED DEPOSITION OF ROBERT HALEY

13 New York, New York

14 July 13, 2016

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23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 110152

1 ROBERT HALEY

2 MS. BELLUSCIO:

3 Q. Capt. Haley, we're going to move on to
4 matter for deposition 1, arrests. I'll read you
5 the matter first before we begin.

6 This is from the notice. "The
7 methods, policies, programs and procedures of
8 the New York City Police Department, or NYPD,
9 written or otherwise, with respect to the arrest
10 of people who use wheelchairs. This the
11 includes but is not limited to any programs,
12 policies and procedures regarding the restraint
13 of such individuals during arrest."

14 I will note before I begin that we
15 broke the notice up into arrests, transport and
16 detention, so this part that we're talking about
17 now would be from the beginning of the encounter
18 until just before transport would begin.

19 A. Okay. Yes.

20 Q. Does the NYPD currently have a policy
21 for how people who use wheelchairs are arrested?

22 A. The NYPD's policy on the arrest of
23 individuals covers all individuals, whether or
24 not they're in a wheelchair, whether they have
25 any other handicap or not.

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2 Q. Are these policies written?

3 A. Yes.

4 Q. And these policies do not have
5 specific designations for what officers are to
6 do if they encounter someone with a wheelchair?

7 MR. NOBLE: Objection.

8 A. Can you -- well, let me state this.
9 That someone in a wheelchair, it's a very broad
10 category, in other words, because there may be
11 many different reasons why a person is confined
12 to a wheelchair.

13 So it would be pretty much impossible
14 to have a written policy covering every little
15 nuance of an arrest when every arrest is
16 different and the -- at the scene of an arrest,
17 the objective is to maintain everyone's safety,
18 the safety of the public, the safety of the
19 subject, and the safety of the officers.

20 Q. So it's your testimony that there are
21 no written policies that specifically reference
22 people who use wheelchairs that deviate from
23 these general arrest procedures?

24 MR. NOBLE: Objection.

25 A. I believe that the policies as written

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2 that cover everybody are fine as they stand now.
3 There are in the sections recent additions to
4 persons with disabilities that have been added,
5 but in general, the -- the arrest chapter and
6 the arrest of persons is designed to capture the
7 most general of terms and to apply it to a
8 number of circumstances.

9 Q. So, Capt. Haley, there are no policies
10 for the NYPD that specifically address people
11 who use wheelchairs during arrest?

12 MR. NOBLE: Objection.

13 A. Nothing is specific with those words
14 in it to address the arrest of persons in
15 wheelchairs. I maintain that the way that it's
16 written, it covers a broad group of people and
17 all arrestees.

18 Q. Capt. Haley, just to be clear for the
19 record, we understand that there are general
20 policies that apply broadly when people are
21 arrested, and those are for anyone who is
22 arrested; is that correct?

23 A. That's correct.

24 Q. And then that there are no written
25 policies that specifically address any changes

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2 to those policies --

3 MR. NOBLE: Objection.

4 Q. -- for people who use wheelchairs?

5 A. When you say -- could you, in other
6 words, clarify. When there are no written
7 changes to those policies?

8 Q. So there are no written policies that
9 specifically address people who use wheelchairs
10 and how the general arrest procedures would be
11 changed because somebody who you are arresting
12 or because the NYPD is arresting uses a
13 wheelchair?

14 MR. NOBLE: Objection.

15 A. Section 208-03 makes reference to
16 paragraph 33. In particular, it gives direction
17 to the desk officer to contact the court section
18 supervisor for instructions regarding the
19 transport of persons in wheelchairs as well as
20 any additional data statement on one of the last
21 pages gives some additional guidelines.

22 Q. And I do want to take an opportunity
23 to go through some of the patrol guide sections
24 that you mentioned previously in the deposition
25 and the one that you are talking about right

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2 now, but just to clarify for the record, these
3 policies are generally for when people are
4 arrested by the NYPD, and they apply to anyone
5 who is arrested; is that correct?

6 A. Yes.

7 MR. NOBLE: Objection.

8 A. Yes, that's correct.

9 Q. And there are no policies that
10 specifically address, outside of these -- so
11 there are no policies outside of these general
12 arrest procedures that specifically address what
13 an officer is to do if they encounter a person
14 who uses a wheelchair?

15 MR. NOBLE: Objection.

16 A. Just as there are no specific policies
17 for somebody who is using crutches or for
18 somebody that's blind or with a guide dog, it's
19 a similar type of situation. So you have to
20 take what's written and apply it to that
21 situation and apply -- and -- and, you know, at
22 the scene of an arrest, there's a lot going on
23 and there are a lot of considerations, and you
24 generally have an officer and you have a
25 supervisor there to verify the arrest, and so

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2 between those persons, they come up with the
3 best manner to handle the situation.

4 Q. But there's nothing in the patrol
5 guide that's written that would guide the
6 officers, for example, if they encounter a
7 person who is blind?

8 MR. NOBLE: Objection.

9 A. Specifically, there is nothing
10 written, but it would be nearly impossible to --
11 to have something to cover, you know, every type
12 of situation, whether --

13 Q. You also mentioned -- excuse me, you
14 mentioned if there -- a person is using a guide
15 dog, there is no specific written directive for
16 a best practice for what the officers are to do,
17 correct?

18 MR. NOBLE: Objection.

19 A. While there are procedures in there
20 for dealing with persons with guide dogs, there
21 is no specific procedure for dealing with the
22 arrest of a person with a guide dog.

23 Q. Okay. And so the same is true of a
24 person who uses a wheelchair, correct?

25 MR. NOBLE: Objection.

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2 Q. The same is true that there are no
3 written policies specifically?

4 A. There is no specific policy that you
5 could say Patrol Guide Section 208-41, arrest of
6 persons in wheelchairs, no.

7 Q. Okay. And there is further no written
8 policy that gives criteria that officers are to
9 consider when they arrest a person with a
10 wheelchair; is that correct?

11 MR. NOBLE: Objection.

12 You have asked that question several
13 times in different words.

14 MS. BELLUSCIO: No, that's a different
15 question than what I asked before. So I
16 asked if there were policies and then I
17 asked if there are criteria that would give
18 an indication about what the officer was to
19 do. So, specifically, are there policies?
20 And your witness testified no. I'm asking
21 if there is something else, which would be
22 criteria that officers are to use.

23 MR. NOBLE: Can you repeat your
24 question then?

25 BY MS. BELLUSCIO:

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2 Q. And there is further no written policy
3 that gives criteria that officers are to
4 consider or follow when they arrest a person who
5 uses a wheelchair; is that correct?

6 A. There is the section of the patrol
7 guide that deals with special category
8 prisoners, and that would cover a prisoner in a
9 wheelchair.

10 Q. And what section is that?

11 A. 210-17.

12 Q. And what does that say?

13 A. In essence, a special category
14 prisoner is to be guarded and supervised more
15 closely than a general population prisoner.
16 They're to be segregated from the general
17 population, and they're to be afforded and given
18 medical treatment, if necessary, whenever
19 necessary.

20 Q. So it's your testimony that this
21 section regarding special categories of
22 prisoners, the first thing that this addresses
23 is prisoners that are to be guarded and
24 supervised more closely; is that correct?

25 MR. NOBLE: Objection. Do you mean,

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2 first thing, sequentially?

3 MS. BELLUSCIO: Yes, the first -- so
4 your witness gave a list of categories that
5 are covered by this policy, and I'm merely
6 going through them.

7 MR. NOBLE: You can just refer to the
8 policy if you have it.

9 MS. BELLUSCIO: I think we can ask the
10 questions. We're here to ask the questions
11 today, and your objection should be limited
12 to form. And there have been quite a few of
13 them, and we would appreciate if you would
14 limit them to form at this point.

15 MR. NOBLE: That's noted.

16 THE WITNESS: Well, the --

17 BY MS. BELLUSCIO:

18 Q. I can ask the question again, Capt.
19 Haley. We were discussing special category
20 prisoners and that there is a policy that
21 specifically addresses special category
22 prisoners; is that correct?

23 A. Yes, that's correct.

24 Q. And the first category is that these
25 prisoners are to be guarded and supervised more

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2 closely than a general population prisoner; is
3 that correct?

4 MR. NOBLE: Objection.

5 A. I wouldn't say that's not a category.
6 In other words, you have the category of special
7 category prisoners, not to be redundant here,
8 where the prisoner has either, you know,
9 attempted suicide or is despondent or needs
10 medical attention or for some reason should be
11 kept separate, so that those are your
12 categories, and a person in a wheelchair would
13 fall into one of those categories and then the
14 steps to be taken follow.

15 Q. Okay. Since we do have a copy of the
16 patrol guide here that was sent to us by your
17 counsel, we will mark this as an exhibit and I
18 would like for us to go through this together.

19 A. Certainly.

20 (Haley Exhibit 2, Patrol Guide
21 Sections 208-03, 210-04 and 210-17, marked
22 for identification, as of this date.)

23 MR. NOBLE: Can I get a copy of that,
24 please?

25 MS. BELLUSCIO: Yes.

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2 MR. NOBLE: Thanks.

3 Also, I think it would be helpful,
4 since there are page number numbers on the
5 top, just if we could reference those so it
6 makes clear what we're talking about.

7 MS. BELLUSCIO: Sure. That makes
8 sense to me as well.

9 BY MS. BELLUSCIO:

10 Q. Capt. Haley, I have handed you what
11 was marked as Haley Exhibit 2.

12 A. Yes.

13 Q. These are several sections of the
14 patrol guide that was forwarded to us by your
15 counsel yesterday. You mentioned that there are
16 sections of 2010-17 [sic], which is located in
17 the middle of this packet.

18 A. Those are the last two sheets,
19 actually.

20 Q. Okay. Can you point to me where in
21 this section -- so this is 2010-17 [sic], there
22 are three pages -- where this identifies how
23 officers are to use this designation?

24 MR. NOBLE: Objection.

25 Q. I'll be more clear. How does that --

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2 this is patrol guide procedure number 2017
3 [sic].

4 How does this relate to your testimony
5 that -- about officers encountering people who
6 use wheelchairs and using this to determine what
7 steps to take?

8 MR. NOBLE: Objection.

9 Also, I think you said 20-17.

10 MS. BELLUSCIO: 20 -- excuse me.
11 210-17, patrol guide.

12 MR. NOBLE: And what's the question?

13 BY MS. BELLUSCIO:

14 Q. The question is how does this
15 illustrate your testimony? Which section of
16 this are you referring to when you talk about
17 this referencing people who use wheelchairs?
18 Will you walk me through it, please?

19 A. Yes, under the definition (a),
20 "because of a medical condition or physical
21 disability" would now place this prisoner into a
22 special category designation.

23 Q. Okay. So just so I'm clear for the
24 record, this section identifies that somebody
25 who has a medical condition or a physical

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2 disability would be in- -- would be identified
3 as a special category prisoner?

4 A. Correct, yes.

5 Q. Correct?

6 Okay. Is there anything else in this
7 section that talks about -- that you were
8 referring to when you said that this section was
9 relevant to your testimony here today?

10 MR. NOBLE: Objection. I just would
11 like to note for the record that the packet
12 marked as Haley Exhibit 2 consists of 25
13 pages and 3 separate patrol guide sections,
14 so I think it would just be helpful if you
15 can specify which section you are referring
16 to.

17 MS. BELLUSCIO: We are referring to
18 the same section. It is procedure 210-17 of
19 the patrol guide, which Capt. Haley
20 referenced in his testimony as being a
21 policy relevant to the NYPD's arrest of
22 people who use wheelchairs.

23 MR. NOBLE: Objection.

24 BY MS. BELLUSCIO:

25 Q. Capt. Haley, you testified about

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2 best possible way to do that would be to
3 front-cuff that person, and that's well within
4 the supervisor's discretion to allow someone to
5 be front-cuffed.

6 Q. And how would the supervisor know
7 about that?

8 MR. NOBLE: Objection.

9 Q. That procedure that would --

10 A. Supervisors know about that based
11 on -- on training that they receive, based on
12 experience, and just their knowledge of arrest
13 processing and how to handle an arrest scene.

14 They could also be guided by central
15 booking supervisors, by contacting them if they
16 had a question, but there's always somebody
17 available to guide.

18 Q. Okay. Are there any procedures about
19 how a person who uses a wheelchair is searched?

20 A. The procedures for searching a
21 prisoner would also apply to somebody in a
22 wheelchair.

23 Q. Are there any written policies about
24 how people are searched, and that can be any
25 arrestee?

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2 A. Yes, that's a section of the patrol
3 guide on frisk field searches.

4 Q. Frisk field searches?

5 A. Yes.

6 Q. Do you know what number that is?

7 A. It's in 208. The exact number I don't
8 know, but I could look that up also.

9 Q. Okay. And that applies generally to
10 all arrestees?

11 A. Correct.

12 Q. Is there anything that references how
13 a person who uses a wheelchair would be searched
14 differently than a general arrestee?

15 MR. NOBLE: Objection.

16 A. It specifically does not mention
17 wheelchair, but every person is different. You
18 know, the time of the year comes into -- there's
19 so many factors that come into the search of a
20 person and to do an adequate field frisk and
21 search, and the key issue with all of these
22 things is obviously safety and it's the safety
23 of the subject as well as the safety of the
24 officers and then the public.

25 And so officers, you know, they

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2 receive training on how to conduct proper frisks
3 in field searches.

4 Q. And is information about different
5 variables written anywhere, different variables
6 that might change how a search happens?

7 A. There are many variables, there's so
8 many variables that it pretty much would be next
9 to impossible to -- to include them all,
10 obviously. There are guidelines and they have
11 to be applied to the situation.

12 So if I have -- whether I have
13 somebody with legs that can walk, somebody
14 without legs at all, I'm only -- I still have to
15 search that person, their entire person. So it
16 really -- the wheelchair is kind of, you know,
17 not such of a factor as you might think it is in
18 the search.

19 Q. So it's the NYPD's policy that there
20 is no difference between a person who uses a
21 wheelchair and a person who does not at the time
22 of a search?

23 MR. NOBLE: Objection.

24 A. Obviously, there's a difference.
25 However, that person, whether it takes 2 minutes

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2 or 20 minutes, in the case of maybe somebody in
3 a wheelchair would take longer, we still have to
4 search that person, and we would do that.

5 Q. And just to clarify for the record,
6 it's not written anywhere how someone -- how an
7 officer would do that?

8 MR. NOBLE: Objection.

9 A. There are just general guidelines
10 written.

11 Q. And where are those written?

12 A. It's in the section --

13 MR. NOBLE: Objection.

14 A. It's in the section of the patrol
15 guide under Frisk Field Search in 208.

16 Q. And that, as you testified before, is
17 the general search and frisk procedure?

18 A. Yes.

19 MR. NOBLE: Objection.

20 THE WITNESS: Sorry.

21 Q. So what would officers do if they
22 encountered a person in a wheelchair and they
23 needed to search them?

24 MR. NOBLE: Objection.

25 A. Well, could you give me a scenario?

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2 you mean by -- I think you said recurring
3 and regular.

4 A. I mean --

5 MS. ROSENFELD: There's no question
6 pending.

7 Q. Officers -- so, Capt. Haley, I'll ask
8 the question again. Officers do encounter
9 people in wheelchairs on a recurring basis?

10 A. Yes.

11 Q. Thank you.

12 Do officers make a determination about
13 whether the person they are arresting needs a
14 wheelchair?

15 MR. NOBLE: Objection.

16 A. It can happen.

17 Q. Is there a written policy about this?

18 MR. NOBLE: Objection.

19 A. Well, there are policies about
20 prisoners who require medical and psychiatric
21 treatment. I mean, if you say do they need a
22 wheelchair, they need to go to the hospital,
23 they need to be hospitalized because they have a
24 condition, or they don't have a wheelchair now,
25 we have to supply them a wheelchair because they

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2 have difficulty walking? Is that what you're
3 referring to?

4 Q. No. I'll rephrase.

5 A. Okay.

6 Q. If officers encounter a person who is
7 in a wheelchair, do they make a determination
8 about whether or not that person needs the
9 wheelchair, or does the arrestee determine that
10 that -- that they need their wheelchair?

11 MR. NOBLE: Objection.

12 A. It's -- it's -- I think the officers
13 are going to assess with their supervisors the
14 circumstances. If you have somebody who's
15 driving a car with hand controls, it's probably
16 safe to assume that that person needs a
17 wheelchair, you know.

18 If it's somebody that -- that maybe
19 has a cast on one leg, then, you know, it's not
20 a medical condition or they're not paralyzed,
21 then perhaps that prisoner just needs to use
22 that to -- for some limited mobility but is
23 still capable of standing, then officers would
24 have to, with the supervisors and also with the
25 subject, and if need be, then call EMS or

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2 medical and get some medical advice as well, and
3 that's all available.

4 Q. And how do -- how do officers on the
5 scene know when to do that, when to call for a
6 supervisor, when to call for EMS?

7 MR. NOBLE: Objection.

8 A. They're to call for a supervisor when
9 they effect an arrest, to come to the scene to
10 verify an arrest, and they do. If a situation
11 where it's an out of an ordinary situation,
12 either multiple arrestees or it's a complicated
13 scene or perhaps somebody with a disability,
14 they would also, similarly, call for a
15 supervisor to help assess the situation and make
16 a determination.

17 Q. So do arresting officers always call a
18 supervisor if they're arresting someone with a
19 disability then?

20 MR. NOBLE: Objection.

21 A. You can never say always. I can't say
22 always because there are situations where, you
23 know, it's -- it's a hostile situation and they
24 have to get out of there or the supervisor is
25 not available, so in that case, they may not

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2 call, or they may call and there would be no
3 supervisor available, but in a majority of
4 times, yes.

5 Q. Is there a written policy about when
6 officers at the scene are to call for a
7 supervisor.

8 A. Your printout 208-02, Haley 3, first
9 page, Scope. I quote, "Uniformed members of the
10 service who have effected an arrest will have
11 the arrest verified by their supervisor, if
12 available, prior to removing the prisoner to the
13 appropriate authorized command/designated arrest
14 facility which has jurisdiction over the
15 arrest."

16 Q. So this is for -- and again, I'm
17 referring to 28 -- 208-02, Arrest, Haley Exhibit
18 3, this refers to every arrest?

19 A. Correct.

20 Q. This is not, if officers encounter a
21 person who is paralyzed, they must call their
22 supervisor to get specific advice about that,
23 correct?

24 MR. NOBLE: Objection.

25 A. To me, it's the same thing. How does

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2 that differentiate? The person's under arrest.
3 They fall under that arrest category. They have
4 to call their supervisor.

5 Q. But the supervisor doesn't always
6 come, correct?

7 MR. NOBLE: Objection.

8 A. The only time the supervisor doesn't
9 come is if, as I mentioned earlier, that the
10 scene is a volatile scene, it's hostile, the
11 officers have to get out of there or, you know,
12 things are going to go bad very quickly, or the
13 supervisor is not available, but they're going
14 to always have that arrest verified; and if it's
15 not a supervisor at the scene, then it's the
16 desk officer, and that will be then in the
17 station house or it could also be over the
18 telephone.

19 Q. And so it's your testimony today that
20 the way a person who uses a wheelchair is
21 handcuffed is determined by the individual
22 arresting officers and their supervisor; is that
23 correct?

24 A. Yes.

25 Q. And that the way a person who uses a

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2 wheelchair who is arrested by the NYPD is
3 searched is also determined by the individual
4 arresting officers and their supervisor?

5 MR. NOBLE: Objection.

6 Q. Is that correct?

7 A. They follow the guidelines. They know
8 how to search and what areas to search, and then
9 they apply it to the individual, whether the
10 individual is in a wheelchair or not.

11 Q. Okay. And there's no, as we have
12 established, there's no written guidelines that
13 talk specifically about the changes that would
14 be made if the person is in a wheelchair,
15 correct?

16 MR. NOBLE: Objection.

17 A. Correct.

18 Q. And then, lastly, the individual
19 arresting officers and their supervisor
20 determine whether the arrestee who they found in
21 a wheelchair needs their wheelchair, correct?

22 MR. NOBLE: Objection.

23 A. Correct.

24 Q. And that's also not based on any
25 written policy, correct?

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2 MR. NOBLE: Objection.

3 A. It's correct.

4 Q. So the preceding questions were based
5 on NYPD policies and procedures. I would also
6 like to ask you a couple of questions in your
7 individual capacity.

8 MR. NOBLE: Objection.

9 Q. In your individual capacity, have you
10 ever arrested a person who uses a wheelchair?

11 MR. NOBLE: Objection.

12 A. No.

13 MR. NOBLE: Don't -- I mean, I'm
14 objecting to this line of questioning.

15 MS. BELLUSCIO: Okay. I think it
16 would be good to take a break at this point.

17 THE VIDEOGRAPHER: The time is 12:35
18 p.m. We're off the record.

19 (Luncheon recess.)
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25

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2 must make an individualized set of decisions
3 about how to proceed; is that correct?

4 MR. NOBLE: Objection.

5 A. It's the officer in conjunction with
6 the supervisor and perhaps maybe another officer
7 on the scene, so it -- that's perhaps how it
8 transpires.

9 Q. And that -- this applies to how
10 arrestees are handcuffed?

11 MR. NOBLE: Objection.

12 Q. Is that correct?

13 A. Well, they will determine the best
14 method, whether or not the person could be
15 rear-cuffed, could they be rear-cuffed with two
16 sets of cuff, or maybe front-cuffed or not
17 cuffed at all.

18 Q. Okay. And it would be fair to say
19 that that would be an individualized
20 determination?

21 A. Based on -- correct.

22 Q. And that same would apply to how they
23 conduct a search of a person who uses a
24 wheelchair would be an individualized
25 determination; is that correct?

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2 A. That is correct.

3 Q. Okay. And then, also, how to assess
4 whether or not a person who uses a wheelchair,
5 whether or not they actually need that
6 wheelchair; that's another thing that they
7 assess on an individual case-by-case basis,
8 correct?

9 MR. NOBLE: Objection.

10 A. Taking into consideration all of the
11 facts and determining if that person were
12 truthful and being honest, and if they -- if
13 they in fact needed it as opposed to just wanted
14 it or was somehow trying to get some kind of
15 preferential treatment, they would take all of
16 the circumstances into account.

17 Q. Okay. And the officers make an
18 individualized choice based on not a written
19 policy, but just --

20 A. Well, it's --

21 Q. -- procedures?

22 MR. NOBLE: Objection.

23 Please wait for the question to end.

24 THE WITNESS: I'm sorry.

25 MR. NOBLE: Objection.

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2 record is Patrol Guide 208-2 -- -02, there is
3 also another section, and that is called
4 Transporting Prisoners to the Station House?

5 A. Yes.

6 Q. Or something along those --

7 A. Yes.

8 Q. Okay. And why don't we start with
9 208-02, which is Exhibit 3. Can you show me
10 where, if anywhere, it specifically references
11 transporting arrestees who use wheelchairs?

12 A. It is in number 3 on the first page,
13 "Remove prisoner to precinct of
14 arrest/designated arrest facility and inform
15 desk officer of charges."

16 Q. Is there a written policy that
17 specifically outlines how officers and NYPD
18 personnel are to transport people who use
19 wheelchairs?

20 A. While the policy does not specifically
21 mention persons in wheelchairs, it mentions how
22 to transport arrestees, and it would cover
23 persons in wheelchairs.

24 Q. But it doesn't specifically mention
25 wheelchair users and differences that might

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2 occur in the transport of someone who uses a
3 wheelchair?

4 MR. NOBLE: Objection.

5 A. Those words are not specifically
6 written in there, but it does cover them as well
7 as anybody on a bicycle or a skateboard or
8 anything else that would be arrested.

9 Q. Where does it cover that?

10 A. We don't have that section with us
11 here.

12 MS. ROSENFELD: Counsel, do you have
13 that patrol guide section available to use
14 so that we can expedite this deposition?

15 MR. NOBLE: I don't have that with me,
16 no.

17 MS. ROSENFELD: For purposes of
18 efficiency, would it be possible to get it
19 and have it used for the deposition right
20 now?

21 Do you have it?

22 MS. NELSON: No, I don't know that I
23 have it. I'm looking.

24 MS. ROSENFELD: We have looked and
25 don't see it quickly available online.

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2 MS. NELSON: Okay.

3 MR. NOBLE: What's the section?

4 Can we go off the record for a second?

5 THE VIDEOGRAPHER: The time is 1:38

6 p.m. We're off the record.

7 (Pause.)

8 THE VIDEOGRAPHER: The time is 1:45

9 p.m. We are back on the record.

10 BY MS. BELLUSCIO:

11 Q. Capt. Haley, does the NYPD have any
12 vehicles that have been designed or retrofit to
13 transport people who use wheelchairs?

14 A. At the present time, there are no
15 specifically designed vehicles for wheelchair
16 prisoners. We do have vehicles that can
17 accommodate pretty much any type of prisoner
18 size-wise.

19 Q. What do you mean by that?

20 A. In other words -- well, in order to
21 clarify this, are you referring to a vehicle
22 that you can push, you know, a wheelchair into
23 or with a ramp and take the entire wheelchair
24 and the person together?

25 Q. So, does the NYPD have any vans --

1 ROBERT HALEY

2 A. Yes.

3 Q. -- that have -- so the NYPD has vans
4 in which they transport arrestees?

5 A. Correct.

6 Q. Do they have any vans that have ramps
7 that roll out that you can roll a person in a
8 wheelchair into the van and transport them?

9 A. No, not at the present time.

10 Q. Has the NYPD made any changes to their
11 existing fleet of vans to make those vans
12 accessible to people who use wheelchairs?

13 MR. NOBLE: Objection.

14 A. The NYPD is currently in the process
15 of designing all new prisoner transport vans to
16 be used for prisoners at the present time.

17 Q. So the NYPD is designing new transport
18 vans --

19 MR. NOBLE: Objection.

20 Q. -- at this point?

21 A. That's correct.

22 Q. Are there plans to have those vehicles
23 be accessible to people who use wheelchairs?

24 A. My understanding is that there will be
25 certain vehicles allotted in every patrol

1 ROBERT HALEY

2 borough that would be able to accommodate
3 persons in wheelchairs.

4 Q. And would those vans have ramps that
5 would roll out --

6 MR. NOBLE: Objection.

7 Q. -- to bring a person in a wheelchair
8 into the van?

9 A. My understanding is that you either
10 have a ramp or a lift.

11 Q. A ramp or a lift?

12 And how do you know that information?

13 A. I know this from meetings that the
14 Criminal Justice Bureau has had with the Fleet
15 Services Division.

16 Q. What's the reason for the NYPD's
17 decision to create a fleet of vehicles that can
18 transport people who use wheelchairs either with
19 a lift or a ramp?

20 MR. NOBLE: Objection. So it seems
21 like these are bordering on conversations
22 which happened within the NYPD. We're
23 concerned that this may be privileged, so we
24 would like an opportunity to confer about it
25 before you ask more questions.

1 ROBERT HALEY

2 MS. BELLUSCIO: Okay.

3 THE VIDEOGRAPHER: The time is 1:49
4 p.m. We are off the record.

5 (Recess.)

6 THE VIDEOGRAPHER: The time is 2:01
7 p.m. We are back on the record.

8 MR. NOBLE: So we have just conferred
9 regarding the last question, which we
10 believe is still pending, and it's our
11 determination that the subject matter of
12 that answer would implicate our privilege,
13 so we're instructing the witness not to
14 answer it.

15 BY MS. BELLUSCIO:

16 Q. So who was present when you had these
17 discussions about the reason for the NYPD's
18 decision to create a fleet of vehicles?

19 A. I attended meetings with higher-ups in
20 the NYPD who had already made the decision to
21 explore other types of vehicles for transporting
22 prisoners. I don't know who in particular made
23 that decision. However, all I know is that my
24 unit was asked for input on design of vehicles.

25 Q. And what type of input did you

1 ROBERT HALEY

2 this fits into and I'm instructing the
3 witness not to answer.

4 MS. BELLUSCIO: We'll move on, but
5 we'll return to this issue.

6 BY MS. BELLUSCIO:

7 Q. Before the break, we discussed whether
8 the NYPD has a written policy specific to how
9 officers and NYPD personnel are to transport
10 people who use wheelchairs, and you indicated
11 that there was a section of the patrol guide,
12 and that this -- during the break, you
13 referenced that this was arrest security
14 measures, which is Patrol Guide Procedure Number
15 208-06; is that correct?

16 A. Yes.

17 Q. I'm going to mark Patrol Guide
18 Procedure Number 208-206 as Haley Exhibit 4.

19 (Haley Exhibit 4, Patrol Guide
20 Procedure Number 208-06, marked for
21 identification, as of this date.)

22 MR. NOBLE: Just to clarify, I think
23 the procedure number says 208-06. I think
24 it might be on the record that it's 208-206.

25 MS. BELLUSCIO: Oh, I apologize.

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2 208-06.

3 BY MS. BELLUSCIO:

4 Q. And Capt. Haley, you have a copy of
5 the Patrol Guide Procedure Number 208-06 in your
6 hand?

7 A. Yes.

8 Q. Is this the procedure that you were
9 referring to in your previous testimony about
10 transporting arrestees who use wheelchairs?

11 A. Yes.

12 Q. Can you walk me through which sections
13 of this patrol guide section specifically
14 reference people who use wheelchairs?

15 A. The entire procedure would apply to
16 any prisoner, whether they were in a wheelchair
17 or not. So basically the entire -- if you look
18 at the first page, where it's told --
19 "Arresting/Escorting Officer: When a prisoner
20 is transported in a department vehicle, the
21 prisoner will be rear-handcuffed, placed in the
22 rear seat and secured with a seat belt on. Seat
23 belts will be used to secure prisoners, when
24 practical, in non-emergency situations."

25 So it's that entire thing, (a) through

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2 (e).

3 In addition, it goes further about the
4 use of a vehicle, a RMP, a radio motor patrol
5 vehicle, which is essentially a police car
6 equipped with a safety partition. It says where
7 the operator of the vehicle should be seated,
8 where the recorder of the vehicle, where the
9 prisoner should be seated, and then has further
10 instructions if you are going to use a
11 12-passenger van to transport prisoners, where
12 the prisoner should be seated in relation to the
13 operator of the vehicle and where the escorting
14 officers will be seated as well.

15 Q. And so it's your testimony that these
16 guidelines in this patrol guide apply to all
17 arrestees that the NYPD transcripts; is that
18 correct?

19 A. Yes.

20 Q. And that there's nothing in Procedure
21 Number 208-06 that specifically references
22 arrestees who use wheelchairs and need to be
23 transported?

24 MR. NOBLE: Objection. That was
25 already asked and answered.

1 ROBERT HALEY

2 MS. BELLUSCIO: I'm clarifying for the
3 record.

4 THE WITNESS: Yes, that's what my
5 position is.

6 BY MS. BELLUSCIO:

7 Q. Are there written procedures or
8 guidelines anywhere that direct NYPD officers
9 how they are to transport individuals who use
10 wheelchairs?

11 A. This is the only section that would
12 cover the transportation of prisoners. If the
13 prisoner was in a wheelchair or not, it's
14 covered by this.

15 Q. Okay. So it's your testimony that
16 there is no other section of the patrol guide
17 that would reference-

18 A. There is --

19 Q. -- transport; is that correct?

20 A. There is no section that specifically
21 references --

22 MR. NOBLE: Objection.

23 A. -- transport of prisoners in
24 wheelchairs.

25 Q. Okay. Are there any other written

1 ROBERT HALEY

2 directives that talk about how to transport
3 individuals who use wheelchairs?

4 A. No.

5 Q. No operations memos?

6 MR. NOBLE: Objection.

7 Q. No operations memos?

8 A. No.

9 Q. There's no cheat sheets for new
10 officers that talk about how to transport
11 individuals who use wheelchairs?

12 MR. NOBLE: Objection.

13 You can answer.

14 A. I don't know if -- what new officers,
15 if there are cheat sheets. There's -- there's
16 nothing published by the New York City Police
17 Department directing specifically how somebody
18 in a wheelchair is to be transported.

19 Q. And there's nothing that outlines
20 criteria other than this section about how
21 arrestees are to be transported?

22 MR. NOBLE: Objection.

23 A. That is correct.

24 Q. And there is nothing that identifies
25 which vehicles are to be used for specific

1 ROBERT HALEY

2 arrestees?

3 MR. NOBLE: Objection.

4 A. Vehicle usage is pretty much a
5 determination of the circumstances of the
6 arrest. You know, if you have multiple
7 perpetrators, subjects, perhaps a vehicle -- one
8 car, two cars or a van. So it's an individual
9 basis that that's decided.

10 Q. And you are much more familiar,
11 obviously, with this patrol guide than I am. Is
12 what you just talked about with one car, two
13 cars or a van, it being an individual decision,
14 is that anywhere in this section of 208-06?

15 MR. NOBLE: Objection.

16 A. No, it's not.

17 Q. And so how would officers know what
18 type of vehicle to call?

19 MR. NOBLE: Objection.

20 You can answer.

21 A. A radio motor patrol car or a police
22 cruiser, whatever you want to call it, is only
23 capable of carrying two, possibly three
24 prisoners in one -- at one time. So if you had
25 multiple prisoners or you had

1 ROBERT HALEY

2 cross-complainants, you wouldn't even want to
3 put them into the same car. You would need two
4 different cars.

5 That's the result of experience,
6 that's the result of -- of conferring with your
7 supervisor and just -- just knowledge of how
8 to -- to properly perform your job.

9 Q. So it's based on individual officer
10 knowledge, not based on any sort of written
11 policy; is that correct?

12 MR. NOBLE: Objection.

13 A. I do not believe that there's any
14 specific section that tells you don't do this,
15 don't do that. It's -- it's based on knowledge
16 and making a determination at the scene.

17 Q. And so how do officers make that
18 decision?

19 MR. NOBLE: Objection.

20 A. They take into consideration all of
21 the factors and all of the variables at the time
22 of arrest; what the offense is; who's committed
23 the offense; how many people are involved; do I
24 have victims; do I have, you know, a hostile
25 crowd. There's a lot of factors that go in. Is

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2 anybody's safety in jeopardy; do I have to leave
3 the scene quickly; do I have the time to wait
4 for additional vehicles.

5 It's -- there's so many variables that
6 they're purposefully not written into the guide
7 because the guide is just that, a guide.

8 Q. Okay. So how about NYPD-sanctioned
9 practices, if a person who is stopped in a
10 vehicle stop is paralyzed and needs to be
11 transported, what are the officers -- what
12 should the officers do in that situation?

13 MR. NOBLE: Objection.

14 You can answer.

15 A. So he's stopped in a vehicle and needs
16 to be transported.

17 We're talking just one person?

18 Q. Sure.

19 A. Average-sized person? A larger
20 person? I mean --

21 Q. Who uses a wheelchair.

22 A. Correct. I mean, if he's stopped and
23 he's seated in a vehicle, the assumption is that
24 he can sit in a vehicle, so if he can sit in his
25 vehicle, he should be able to sit in one of our

1 ROBERT HALEY

2 how the NYPD puts a person who is paralyzed from
3 their chair into a van?

4 MR. NOBLE: Objection.

5 A. The procedure to transport prisoners
6 is under the security measures and they have to
7 apply that the best way they can.

8 Q. And so in applying -- and when you say
9 that, you're referring to Exhibit 4, which is
10 the Patrol Guide Procedure Number 208-06,
11 correct?

12 A. Yes.

13 Q. And so this is the section of the
14 guide that the officers apply when they are
15 transporting people who use wheelchairs?

16 A. Yes.

17 Q. And there is nothing in here that
18 specifically references people who use
19 wheelchairs, correct?

20 A. Specifically, no, that is not in
21 there.

22 Q. Thank you.

23 Do officers transport assistive
24 devices such as wheelchairs along with people
25 who have mobility impairments?

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2 MR. NOBLE: Objection.

3 A. Yes, they do.

4 Q. Is that written anywhere?

5 MR. NOBLE: Objection.

6 You can answer.

7 A. What is written is that the officer
8 has to safeguard the prisoner as well as the
9 prisoner's property. So any property that a
10 prisoner has, whether it's a wheelchair, a
11 shopping cart, a bicycle, has to go along with
12 the prisoner --

13 Q. And where is --

14 A. -- back to the command.

15 Q. And where is that identified?

16 A. Well, that's all throughout various
17 sections of the patrol guide. I would have to
18 sit down with the patrol guide and look to find
19 it for you, but it is in there.

20 Q. Is it in any of the sections that we
21 have before us today?

22 A. If you could afford me a moment, it
23 may be.

24 (Document review.)

25 A. Okay. If you make reference to

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2 Exhibit 2, Patrol Guide 208-03, page 3-4. I'm
3 sorry, 4 of 14, where it says, number 13, "Give
4 itemized receipt for property temporarily
5 removed from the prisoner which is not to be
6 held in police custody," and then 14, "Ask
7 prisoners if they want any personal property
8 they possess to be vouchered for safekeeping,
9 other than property removed under steps 12 and
10 13," and then you make a command log entry
11 indicating that they either refused the property
12 clerk invoice or they -- or that -- or if there
13 was property, they put the property clerk
14 invoice there. So when you deal with prisoners,
15 you also deal with their property.

16 Q. Does it say anywhere in this that
17 property includes an assistive device like a
18 wheelchair?

19 A. Property includes everything that the
20 prisoner has with them. If they're a homeless
21 person with 30 shopping bags, it includes 30
22 shopping bags full of items.

23 Q. So it's fair to say that the section
24 that you pointed out on page 4 of 14 of Patrol
25 Guide 208-03 generally is just a general policy

1 ROBERT HALEY

2 that applies to all arrestees, correct?

3 A. Correct.

4 Q. And there's nothing in here that is
5 specific to mobility devices such as
6 wheelchairs?

7 MR. NOBLE: Objection.

8 Q. Correct?

9 A. There is nothing --

10 MR. NOBLE: You can answer.

11 A. -- specific, but it most certainly
12 does apply to that.

13 Q. Is there a written policy about
14 whether NYPD officers seat-belt arrestees during
15 transport?

16 A. Yes, there is.

17 Q. Where is that located?

18 A. Okay. If you look at Exhibit 4,
19 Security Measures, if you look at the first
20 paragraph, subdivision (e), it says, "When the
21 seat belt is being secured on the prisoner by a
22 member, the other member will remain on the
23 opposite side of the RPM" -- that's that police
24 cruiser -- "with the rear door open to be
25 tactically able to assist in the event of an

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2 you were able to get them into the vehicle in
3 the first place; that is, if they were able to
4 get in and out of a car from a chair themselves,
5 you would afford them the opportunity with
6 assistance to get out of the back of a police
7 cruiser back into a chair and then continue the
8 arrest processing.

9 Q. And is that written anywhere?

10 A. It's not written anywhere as far as
11 taking mobile -- people that are mobile out of
12 police cars. So it's not written anywhere, no.

13 Q. And what would the procedure be that
14 NYPD officers would use when a vehicle arrives
15 at an NYPD precinct and they need to remove that
16 person who is a wheelchair user from the NYPD
17 vehicle?

18 MR. NOBLE: Objection.

19 You can answer.

20 A. Well, the procedure is much in the
21 reverse of the same as entering a vehicle. The
22 car would pull up to the appropriate entrance
23 where they bring prisoners, and they would, like
24 I mentioned, if the prisoner was able to get --
25 he was driving a vehicle himself, he was able to

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2 get from a chair into a car, from a car into a
3 chair, then we would assist him back into the
4 chair and then continue with the processing in
5 the station house.

6 If we lifted him onto a bench or onto
7 the floor and then onto the bench, then we would
8 have to do the same to put him back into the
9 chair and bring him into the command, the
10 precinct to process the arrest.

11 Q. And do officers know about these ways
12 to remove people from vehicles based on their
13 own experiences and the experiences of their
14 supervising officers, as with the other areas?

15 MR. NOBLE: Objection. Calls for
16 speculation.

17 You can answer.

18 A. Yes, much in the same way that they
19 know how to place them in vehicles, or they are
20 guided also to some extent by the subject too,
21 who can perhaps guide them.

22 Q. And what about specifically for
23 removing an arrestee from an NYPD van, what
24 would be the procedure there?

25 A. I'm not sure if I follow you. I

1 ROBERT HALEY

2 thought I answered that.

3 Q. Sure. So we were talking about
4 vehicles?

5 A. Right.

6 Q. And I would assume, as I am sure you
7 would as well, that a person who is paralyzed
8 would be able to perhaps get in and out of a
9 sedan and that their needs might be different if
10 there was a van that they were being removed
11 from.

12 So you mentioned doing it the same
13 way, and then also them directing what they
14 would need to be able to get out of the vehicle.

15 Would that be different if it was a
16 van? What would the differences be?

17 MR. NOBLE: Objection to form.

18 You can answer.

19 A. Well, obviously the van is a higher
20 vehicle and they're already on the seat in the
21 van. If we helped them up onto that seat from
22 the floor of the van, we would have to help
23 them, support them, place them onto the floor
24 and then from the floor into the chair.

25 Q. Okay. And how do officers know to do

1 ROBERT HALEY

2 that?

3 MR. NOBLE: Objection.

4 You can answer.

5 A. If they were at the scene and they
6 put -- that's how they placed him in the
7 vehicle, it would just make sense that they did
8 the same in reverse to help them out of the
9 vehicle.

10 Q. Okay. So it would just make sense; it
11 would be based on their experience that day?

12 A. Or any other experience --

13 MR. NOBLE: Objection.

14 You can answer.

15 A. Sorry.

16 Or any other experience that they may
17 have at any other time with persons in
18 wheelchairs.

19 Q. Okay. So it would be based on their
20 individual experience rather than a designated
21 procedure by the NYPD?

22 MR. NOBLE: Objection.

23 You can answer.

24 A. Correct.

25 Q. Does the fleet of vans that the NYPD

1 ROBERT HALEY

2 questions for this section.

3 Is it NYPD policy to use Access-A-Ride
4 vans to transport people who use wheelchairs?

5 MR. NOBLE: Objection.

6 You can answer.

7 A. There is a policy now where
8 Access-A-Ride vans can be utilized for
9 complainants and for witnesses and for other
10 people in wheelchairs. I do not believe that it
11 applies to prisoners.

12 Q. Is that a written policy?

13 MR. NOBLE: Objection.

14 You can answer.

15 A. Yes, it is.

16 Q. Is it in the patrol guide?

17 A. No, it's not in the patrol guide.

18 Q. Where is it?

19 A. I believe it's operations order --
20 Operations Order 15 of 2016.

21 Q. When was that issued?

22 A. Recently. I think it may have just
23 come into play this June, past June, June 1.

24 Q. Do you have a copy of that with you
25 today?

1 ROBERT HALEY

2 A. That I do not.

3 MS. BELLUSCIO: We would ask for
4 production of that notice.

5 MR. NOBLE: The request is noted.
6 Please put it in writing.

7 BY MS. BELLUSCIO:

8 Q. And just to clarify for the record,
9 this operations order does not affect arrestees?

10 MR. NOBLE: Objection.

11 You can answer.

12 A. That's correct.

13 Q. Thank you.

14 I would like to return to Exhibit 2,
15 patrol guide Arrest, General Processing. This
16 is procedure number 208-03. The date issued and
17 date effective on this procedure is June 1,
18 2016, correct?

19 A. That's correct.

20 Q. Are there parts of this that are new
21 as of June 1, 2016?

22 MR. NOBLE: Objection.

23 You can answer.

24 A. Yes, I believe, in particular, number
25 33 was added and was effective June 1, 2016.

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2 Q. Anything else?

3 A. I know for sure that that was. With
4 regard to anything else in there, I'm not a
5 hundred percent sure.

6 Q. Why was that added, number 33?

7 A. That was added to assist supervisors
8 and officers in the field with information as to
9 how to bring and where to bring prisoners who
10 are in wheelchairs down to the court facilities,
11 the central booking locations so they would know
12 what entrances to use, where there was a ramp,
13 where there was an elevator, where there was an
14 ADA-compliant bathroom.

15 Q. So this is specific to officers that
16 are bringing arrestees to central booking?

17 A. Correct.

18 Q. And just to confirm, there is nothing
19 else that is new in procedure number 208-03
20 other than number 33, correct?

21 MR. NOBLE: Objection.

22 You can answer.

23 A. Well, just as I go through this and I
24 look at page 11 of 14, Arrests of Persons With
25 Disabilities, that's fairly new. That may not

1 ROBERT HALEY

2 be the newest thing, but that is fairly new.

3 That hasn't been there for that long. And the
4 rest has been there for at least a year or so.

5 Q. When was the Arrests of Persons With
6 Disabilities section added?

7 That would be on page 11 of 14 of
8 Patrol Guide Procedure Number 208-03, Exhibit 2.

9 A. This is probably within the last year.

10 Q. And why was this section added?

11 And again, we're referring to page 11
12 of 14, Patrol Guide Procedure Number 208-03,
13 Arrests of Persons With Disabilities, and the
14 question is: Why was this section added within
15 the past year?

16 A. Generally, when things are added into
17 the guide, there's an issue that has come up and
18 has to be addressed. So that would be a type of
19 situation where perhaps there was an instance or
20 two where that would give some more guidance so
21 that was added. I wasn't part of that revision.

22 Q. So it would be fair to say that, when
23 confronted with issues in communities such as
24 the disability community, the NYPD sometimes
25 does add policies and procedures to reflect

1 ROBERT HALEY

2 those issues --

3 MR. NOBLE: Object.

4 Q. -- is that correct?

5 MR. NOBLE: Objection.

6 You can answer.

7 A. That is correct.

8 Q. In the case of page 11 of 14, Patrol
9 Guide Procedure Number 208-03, the section
10 Arrests of Persons With Disabilities, which was
11 added within the past year, in the case of this
12 provision, having a written provision for how to
13 deal with people with disabilities was
14 considered helpful to the NYPD, correct?

15 MR. NOBLE: Objection.

16 You can answer.

17 A. Yes.

18 Q. And that's why this section was added,
19 correct?

20 A. Yes.

21 Q. Patrol Guide Procedure Number 210-04
22 also has an effective date of June 1, 2016.

23 Can you explain which sections of this
24 procedure, which is again procedure 210-04, are
25 new as of June 1, 2016?

1 ROBERT HALEY

2 MS. NELSON: Which one?

3 A. This is --

4 Q. Prisoners Requiring Medical and
5 Psychiatric Treatment?

6 A. 210-04.

7 Q. This is part of Exhibit 2.

8 A. Yes. Just bear with me one second.

9 If you go to the Additional Data, page
10 6 of 8, that top about the Criminal Justice
11 Bureau is in the section.

12 "Whenever a member of the Criminal
13 Justice Bureau assigned to a Borough Court
14 Section is informed of, or otherwise becomes
15 aware that a prisoner in the custody of that
16 Court Section requires medical/psychiatric/drug
17 addiction attention, that member will
18 immediately notify the Borough Court Section
19 desk officer. The Borough Court Section desk
20 officer will make a Command Log entry and ensure
21 that medical treatment is provided. In Borough
22 Court Sections where the Emergency Medical
23 Service is situated, the Borough Court Section
24 desk officer will request the assistance of the
25 assigned Emergency Medical Technicians regarding

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2 the prisoner's medical treatment. However, if
3 it is determined that a prisoner requires
4 medical attention at a hospital emergency room,
5 the supervisor is responsible to ensure that the
6 prisoner is transported immediately for
7 treatment."

8 That top portion there, that's --

9 Q. So that paragraph that you just
10 read --

11 A. Yes.

12 Q. -- is the only new section --

13 A. Correct.

14 Q. -- as of June 1, 2016?

15 A. And there is one additional on the
16 previous page, under Suspected Ingestion of
17 Narcotics/Other Dangerous Substances, the second
18 paragraph:

19 "Whenever a member of the Criminal
20 Justice Bureau assigned a -- whenever a member
21 of the Criminal Justice Bureau assigned to a
22 Borough Court Section observes" --

23 Q. I'll interrupt you. You don't have to
24 read the whole thing. Thank you very much.

25 A. That's useful.

1 ROBERT HALEY

2 Q. Is there also -- I'm looking at page 3
3 of 8 of the Patrol Guide Procedure Number
4 210-04, number 25, subsection (b)(1) --

5 A. You're good.

6 Q. -- discusses people who use
7 wheelchairs?

8 A. Yes.

9 Q. Is that something that was new as of
10 June 1, 2016, also?

11 A. That coincides with the 208 -- thank
12 you -- 208-03, the wheelchair section in the
13 back with the supervisor conferring, yes.

14 Q. So that was also new as of June 1,
15 2016?

16 A. Yes. Yes. Yes. Yes.

17 Q. And what was the reason for adding
18 that?

19 A. It would go hand-in-hand with the
20 change to the 208-03 that there had to be a case
21 or several cases where we had prisoners in
22 wheelchairs and some guidance was needed. So
23 that came to be under the responsibility of the
24 Criminal Justice Bureau for that.

25 Q. And so, in this case as well, the case

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2 of 25(b) subsection (1), this was also a case
3 where having a written provision for how to deal
4 with people with disabilities was considered
5 helpful by the NYPD, correct?

6 MR. NOBLE: Objection.

7 You can answer.

8 A. Yes.

9 Q. Thank you. Also within Exhibit 2, the
10 last document, which is Patrol Guide Procedure
11 Number 210-17, Arrest Processing of
12 Pre-Arrestment Prisoners Designated As "Special
13 Category," the date issued and the effective
14 date of this document is May 27, 2016.

15 Can you walk me through which sections
16 of Procedure Number 210-17 were new as of May
17 27, 2016?

18 A. I believe what they did in this
19 instance was -- one second -- the Prisoners
20 Confined to Wheelchairs or Otherwise Mobility
21 Impaired section.

22 Q. Where is that?

23 A. That's page 2 of 3 on the bottom.

24 That would all be considered part of
25 that same revision to the patrol guide. So

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2 where you find one section that deals with
3 another section, you have to see that the
4 revision makes its way into each section in the
5 appropriate place.

6 Q. And how are the sections connected in
7 this case with these three new provisions?

8 A. Well, they're connected in that
9 they -- they put the responsibility onto the
10 borough court section supervisor to -- to help
11 them -- give them direction with lodging and
12 further processing, and then that coincides
13 with, at our facilities, at the court sections,
14 at the central booking locations, you know,
15 where to bring them, where -- what elevators to
16 use, what entrances to use, where there is
17 bathrooms where they will be arraigned, where
18 they will be held, that type of thing.

19 Q. And so it's the borough court section
20 supervisor that decides --

21 A. Yes.

22 Q. -- all of those things?

23 MR. NOBLE: Objection.

24 THE WITNESS: I'm sorry.

25 MR. NOBLE: You can answer or clarify.

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2 A. Yes, it's the borough court section
3 supervisor.

4 Q. Is there anything else in Patrol Guide
5 Procedure Number 210-17 that is new as of May
6 27, 2016, or is it only page 2 of 3, the last
7 paragraph, Prisoners Confined to Wheelchairs or
8 Otherwise Mobility Impaired?

9 A. That, to my knowledge, that is the
10 only change in this. It's not a large
11 procedure, so it's fairly -- that probably went
12 from two pages to three because of that one
13 addition.

14 Q. Thank you.

15 MS. ROSENFELD: Other than the
16 questions which were objected to on the
17 basis of the deliberative process privilege,
18 that concludes the testimony for the section
19 on transport, which was topic 3, and so just
20 to sort of give everybody in the room of
21 sense of how much we have left, we have the
22 topic 4 -- topic 3.

23 THE WITNESS: 3.

24 MS. NELSON: I think you just finished
25 2, right.

1 ROBERT HALEY

2 Corp. v. U.S. 212 West Law 4018026.

3 So a number of the questions that we
4 asked were factual questions that in no way
5 could contain in their answers anything that
6 would be pre-decisional or deliberative
7 because they are seeking facts, not
8 information about the subject of
9 conversations that Capt. Haley had.

10 So we're going to ask the questions
11 again, and you can instruct him to answer,
12 but I would request that you revisit your
13 objections based on what we believe is the
14 proper application of the deliberative
15 process privilege in this context.

16 BY MS. ROSENFELD:

17 Q. Capt. Haley, you testified earlier
18 that --

19 MS. NELSON: Can you give us a second?

20 MS. ROSENFELD: Sure.

21 (Pause in the proceedings while Ms.
22 Nelson and Mr. Noble confer.)

23 BY MS. ROSENFELD:

24 Q. Capt. Haley, you testified earlier
25 that vehicles will be introduced in every patrol

1 ROBERT HALEY

2 borough that would be able to transport people
3 who use wheelchairs; is that correct?

4 A. Yes, that's correct.

5 Q. And that would be vehicles will be
6 introduced in the future, is that your
7 testimony?

8 A. Yes.

9 Q. And those would specifically be
10 vehicles that will be introduced to transport
11 people who are wheelchair users who have been
12 arrested; is that correct?

13 A. Yes, that's correct.

14 Q. And there are currently no such
15 vehicles in the NYPD fleet, correct?

16 A. That is correct.

17 Q. And you were asked what was the reason
18 for the decision to create a fleet of vehicles
19 that can transport people who use wheelchairs,
20 and your counsel objected to that question on
21 the basis of this privilege. I'm not asking you
22 the question again. We've moving toward.

23 How many vehicles will be introduced?

24 MR. NOBLE: We're going to object to
25 that. I mean, this is still pre-decisional.

1 ROBERT HALEY

2 I think he's made it clear that this is
3 not -- this is something that hasn't been
4 finalized and that there's still decisions
5 that are being made about what the final
6 product is going to look like.

7 MS. ROSENFELD: Okay. I object to
8 your objection, but it's noted for the
9 record. I'll keep going. You can keep
10 noting your objections.

11 BY MS. ROSENFELD:

12 Q. When will these vehicles be
13 introduced?

14 A. I do not have a timeframe. You know,
15 sometime in the near future, I believe. I would
16 say within the year.

17 Q. Within the calendar year of 2016?

18 A. We're halfway over the year, right?
19 Yeah, so maybe within 12 months, next 12 months.

20 Q. Who is in charge of the program to
21 introduce wheelchair-accessible vehicles into
22 the patrol boroughs?

23 A. The Deputy Commissioner of Support
24 Services.

25 Q. And who is that person?

1 ROBERT HALEY

2 A. Robert Martinez.

3 Q. Is there a specific allocation of -- a
4 budgetary allocation to purchase these vehicles?

5 MR. NOBLE: Objection.

6 And don't answer that.

7 Q. When did the NYPD determine that there
8 was a need for wheelchair-accessible vehicles in
9 the patrol boroughs?

10 MR. NOBLE: Objection.

11 You can answer.

12 A. I could not tell you specifically when
13 they decided, but I know that the police
14 department, particularly under Commissioner
15 Bratton, is taking a lot of steps to -- to
16 answer the needs of the community.

17 So this would be one of those areas
18 that if there is a need for it, he would explore
19 and look to -- to satisfy that. So I couldn't
20 give you an exact date, but it's most likely a
21 result of his doing along with Commissioner
22 Martinez.

23 Q. So the New York City Police Department
24 determined that there was a need for
25 wheelchair-accessible vehicles, correct?

1 ROBERT HALEY

2 are -- relate to this potential plan?

3 A. At the current time, that's correct, I
4 have not seen any.

5 Q. What about any -- any draft budgets,
6 anything like that, you haven't seen anything?

7 A. Not for wheelchair-accessible
8 vehicles.

9 Q. When the New York City Police
10 Department introduces -- if it introduces these
11 vehicles, will there be an operations order or a
12 patrol guide update that accompany it?

13 MR. NOBLE: Objection.

14 You can answer.

15 A. Normally, when something new is
16 introduced, it will start out as a pilot project
17 which will be -- or, pilot program, rather,
18 which will be an operations order, and then if
19 deemed successful, it would expand and then be
20 incorporated into the patrol guide.

21 Q. Do you know how many people every year
22 who use wheelchairs are arrested by the New York
23 City Police Department?

24 A. The statistics that I have only go
25 back to February of this current year.

1 ROBERT HALEY

2 Q. So what is the time period of those
3 statistics?

4 A. From February -- I'm not sure of the
5 date of February, but February of this year to
6 through June. I believe there were seven.

7 Q. So from February 2016 to June 2016,
8 seven persons who use wheelchairs were arrested
9 by the New York City Police Department?

10 A. Yes.

11 Q. And is there a reason that you only
12 know the data starting February 2016?

13 A. The reason is -- well, when I began to
14 prepare for this, and I only found out about it
15 Friday. I wasn't at work Friday, so on Monday I
16 tried to get whatever information together that
17 I could get together.

18 Q. Where did you find the statistic that
19 it's seven people from February to date?

20 A. We are maintaining that in the
21 Criminal Justice Bureau. My office is
22 maintaining that statistics, those statistics.

23 Q. You are actively collecting that?

24 A. Yes.

25 Q. If you wanted to collect it for

1 ROBERT HALEY

2 earlier timeframes, could you?

3 A. It would most likely be an extremely
4 time-consuming, exhaustive effort to search
5 through the -- we have over 200,000 persons
6 arraigned, roughly, a year, but going back to
7 2011, the numbers were double that, you know.
8 So only if that information were recorded in a
9 computer system somewhere would we be able to do
10 that.

11 Q. Where did you find it for the seven
12 people that you identified just on Monday when
13 you were looking for it?

14 A. We have given notice to our borough
15 court sections to notify us, the main office,
16 whenever they have somebody in custody who is in
17 a wheelchair.

18 Q. And you gave -- and that program of
19 notification began in February?

20 A. That is -- well, I don't know if it
21 began in February or we began a little later.
22 We went back to February, but it most likely
23 began in February.

24 Q. So, in and around February 2016, your
25 office requested that the borough court

1 ROBERT HALEY

2 supervisors notify you if somebody was arraigned
3 who uses a wheelchair?

4 A. That's correct.

5 Q. And based on that process, you have
6 been able to identify seven people since then
7 who have been arraigned who are wheelchair
8 users?

9 A. Yes.

10 Q. And are you also aware that at the
11 North Infirmary Command on Rikers Island, there
12 are a number of people detained there who are
13 wheelchair users?

14 A. I'm not aware of that; however, that's
15 a separate agency.

16 And they're already incarcerated, I'm
17 assuming?

18 Q. Uh-huh. Correct.

19 A. Right, so...

20 Q. Okay. So you said there was 200,000
21 people arraigned in 20- --

22 A. Probably in 2015.

23 Q. '15.

24 And approximately 400,000 people in
25 2011?

1 ROBERT HALEY

2 A. Correct.

3 Q. Do you plan to keep conducting --
4 withdrawn. Do you plan to keep collecting the
5 statistic about wheelchair users who are
6 arraigned?

7 A. Yes.

8 Q. And what is the purpose of NYPD's
9 collection of that data?

10 A. I just know that we were instructed in
11 the Criminal Justice Bureau to start to keep
12 track of that so...

13 Q. By whom?

14 A. I just report to my inspector and to a
15 chief, so I don't know. You know, I've been
16 getting it from one of them, and I know of the
17 lieutenant who does that, you know, daily or
18 weekly. He collects that data or it's called in
19 to him.

20 Q. You have to collect a lot of data,
21 probably.

22 Did you do any investigation into the
23 circumstances of the arrest, transport, and
24 detention of those seven people that you
25 identified between 2015 and now?

1 ROBERT HALEY

2 Q. And you may have answered this
3 question. I apologize. Where is this bathroom
4 located?

5 A. It's in a hallway opposite the main
6 holding cell.

7 Q. And where is the main holding cell
8 located?

9 A. It's directly behind the desk officer.

10 Q. Does the 113th Precinct have any
11 written policies about making bathroom
12 facilities available to arrestees who use
13 wheelchairs?

14 A. All precincts have --
15 I'm sorry. Could you repeat the
16 question?

17 Q. Yes. Does the 113th Precinct have any
18 written policies about making bathroom
19 facilities available to arrestees who use
20 wheelchairs?

21 A. They would be the same policies that
22 every precinct would have making bathrooms
23 available to any arrestee, whether they're in a
24 wheelchair or not.

25 Q. And where is that located, that

1 ROBERT HALEY

2 written policy?

3 A. Well, every precinct has bathrooms
4 designated for prisoner use, and so in the New
5 York City Police Department, we feed prisoners
6 if they're with us during meal time; if they
7 have to use facilities, we afford them the
8 ability to use the facilities.

9 I don't know that there's so much a
10 written policy anywhere. That's just the
11 common, you know, etiquette and decency.

12 Q. So is there a written policy specific
13 to arrestees who use wheelchairs and their
14 bathroom use?

15 A. It would be the same as any policy who
16 governs a prisoner who is not in a wheelchair.

17 MR. NOBLE: I'm sorry. Could we take
18 a quick break?

19 MS. BELLUSCIO: Sure.

20 THE VIDEOGRAPHER: The time is the
21 4:54 p.m. We are off the record.

22 (Recess.)

23 THE VIDEOGRAPHER: The time is 4:57
24 p.m. We are back on the record.

25 BY MS. BELLUSCIO:

1 ROBERT HALEY

2 Q. Capt. Haley, before we took a break,
3 we were discussing the policy of the 113th
4 Precinct for arrestees who use wheelchairs and
5 their bathroom use, and it is your testimony
6 that there is no specific written policy that
7 governs wheelchair users' use of the bathroom at
8 the 113th Precinct, correct?

9 A. My -- my testimony was that it's the
10 same policy that governs the use by any prisoner
11 would also apply to prisoners in wheelchairs.
12 If they need additional bathroom breaks, they
13 would be afforded that, and that's pretty much
14 how it would go.

15 Q. And is that written somewhere?

16 A. No, it's not written anywhere.

17 Q. And how do people know about that
18 policy?

19 A. Well, we have prisoner bathrooms for
20 prisoner use and, you know, just like we have
21 bathrooms for non-prisoner use. So when people
22 have to go to the bathroom, unfortunately,
23 prisoners have to ask officers for permission to
24 use the bathroom, they have to be escorted, but
25 we escort them.

1 ROBERT HALEY

2 Q. And then once the detainees at the
3 113th Precinct are escorted, if that person is
4 paralyzed, what is the procedure to make sure
5 that they can use the bathroom?

6 A. This would be similar to transporting
7 a prisoner at the -- from the scene of arrest to
8 a precinct. It would depend on the variables,
9 and when you say paralyzed, you know, does the
10 prisoner have good use of his or her arms; is
11 the, you know, the prisoner able to stand or --
12 but naturally, a prisoner would require some
13 assistance from an officer, or if they were able
14 to get -- and they -- I do believe that they can
15 fit the wheelchair inside of that room. They
16 can get from the wheelchair to the toilet. They
17 would perhaps not need any assistance. Depends
18 upon how ambulatory they are.

19 Q. And you testified before that you
20 didn't take any measurements of these
21 facilities, correct?

22 A. Correct.

23 Q. And therefore, it sounds like, as with
24 other matters that we have discussed today, this
25 procedure is based on the individual officer's

1 ROBERT HALEY

2 understanding and experience?

3 MR. NOBLE: Objection.

4 Q. As opposed to a written policy?

5 MR. NOBLE: Objection.

6 You can answer.

7 A. That is correct.

8 Q. Are there cameras that record within
9 the 113th Precinct?

10 A. The cameras in the precinct are
11 surveillance-type cameras, but they don't have
12 recording capability. So, in other words,
13 they're at the desk position. The desk officer
14 can look inside the cells and see prisoners in
15 the cells. That's not recorded.

16 Q. Why is that?

17 A. I think, like anything else, as
18 technology becomes available, it gets utilized.
19 A lot of these systems are in the process of
20 being replaced, and they're getting -- all
21 pretty much have been upgraded with cameras and
22 monitors, but prisoners are constantly being
23 supervised and they should be checked at least
24 every 30 minutes in addition to being visible on
25 the video screen in front of the desk so that if

1 ROBERT HALEY

2 a prisoner were attempting suicide or were in
3 distress, there's an officer who typically is
4 like a cell attendant would, you know, render
5 assistance, where the desk officer would see it
6 and call to an officer to go in there so that
7 there has never really, I think, been any
8 necessity to record these instances.

9 Q. Okay. Are there surveillance cameras
10 elsewhere in the 113th Precinct?

11 A. When I went to the 113th, I just
12 looked at the arrest processing area and the
13 prisoner bathroom and such. So there may be,
14 but I don't know.

15 Q. Are there any plans for renovations
16 for the 113th Precinct?

17 A. To my knowledge, no.

18 Q. When was the last renovation at the
19 113th Precinct?

20 A. I'm not able to answer that question.
21 I do not know.

22 Q. Where does the 113th Precinct detain
23 people who use wheelchairs?

24 A. It would be -- it would depend upon
25 how many prisoners were in the 113th Precinct at

1 ROBERT HALEY

2 the time. If they were occupying the main
3 holding cell, then the prisoner in a wheelchair
4 could be detained outside that main holding cell
5 but within the room that houses that holding
6 cell. That's one possible place.

7 Q. And what if the person needs
8 wheelchair needed to be there overnight for
9 processing, where would they detain that person
10 then?

11 A. You have to make a distinction between
12 overnight and processing, because overnight,
13 frequently, if you commit a crime at 10 o'clock
14 at night, you're going to be there overnight.
15 Whether or not -- no prisoner is going to be
16 given, let's say, a bed and allowed to sleep
17 because they're part of this processing process.

18 So they would either be seated -- most
19 prisoners would be seated on a bench inside the
20 cell, or it was a prisoner in a wheelchair, it
21 would most likely be in the wheelchair, in his
22 wheelchair or her wheelchair.

23 Q. And that's even if the processing -- I
24 think I'm using that correctly -- if the -- so
25 that would even be if the processing took almost

1 ROBERT HALEY

2 40 hours?

3 MR. NOBLE: Objection.

4 You can answer.

5 It's not totally clear to me what
6 you're asking.

7 A. Yes, well, it's a rare case when the
8 processing takes that long. It does happen in
9 certain instances. I would equate it to maybe a
10 prisoner sitting on the bench in the holding
11 cell for nearly 40 hours as well. I mean, it's
12 uncomfortable, it's not the ideal situation, but
13 unfortunately, it happens.

14 Q. Are the people who did not use
15 wheelchairs that you just mentioned who are
16 detained in the larger holding cell, are they
17 handcuffed for the time that they're in that
18 holding cell?

19 A. No.

20 Q. Are the wheelchair users who are
21 detained outside of the holding cell, are they
22 handcuffed for the period that they're in the
23 113th Precinct?

24 A. Any prisoner that would not be in a
25 cell that would -- and that would include a

1 ROBERT HALEY

2 female prisoner not in that main holding cell or
3 a juvenile in the juvenile room, would be
4 handcuffed -- one hand, at least -- to a rail
5 that is attached to the wall.

6 Q. And just to clarify for record, so
7 that's any prisoner who was not detained in a
8 holding cell would be handcuffed, one hand, at
9 least, to a rail that is attached to the wall,
10 is that correct?

11 A. Yes.

12 Q. And that is no matter how long the
13 individual is detained at the precinct; is that
14 correct?

15 A. Yes, that is correct.

16 Q. How high up is the rail on the wall
17 that the arrestees are attached to?

18 A. It's between 36 and 40 inches.

19 Q. Did you measure that?

20 A. No.

21 Q. Is it consistent with NYPD policy to
22 have an arrestee who uses a wheelchair attached
23 to the wall outside of a holding cell?

24 A. I'm not sure if I --

25 Q. Sure. I can rephrase.

1 ROBERT HALEY

2 Is it consistent with NYPD policy for
3 an individual NYPD precinct to detain an
4 arrestee who uses a wheelchair outside of a
5 holding cell and have them handcuffed to a wall
6 for their period of detention?

7 A. If that's the only place available to
8 secure that prisoner and keep that prisoner
9 under observation, then that would be
10 consistent.

11 Q. And who makes the decision as to where
12 an individual arrestee who uses a wheelchair is
13 detained at the 113th Precinct?

14 A. Well, at the time, that would be the
15 desk officer.

16 Q. And that's not based on any written
17 policies, correct?

18 A. Written policies, you would have to
19 infer from how we house prisoners that you have
20 to keep males and females separated, juveniles
21 and adults separated, and so you're not always
22 afforded with the luxuries of having that many
23 cells. And sometimes you have a lot of
24 prisoners, you know, and so that would maybe be
25 part of that decision to have somebody, you

1 ROBERT HALEY

2 know, handcuffed to a rail.

3 And in certain cases, if I may offer
4 this, in the 113th Precinct, the -- there is
5 another -- the cell area with the individual
6 cells for overnight lodging, there is a large
7 area there that is open that you could put a
8 detainee in a wheelchair in that area as well.

9 Q. Would you say that it would be
10 preferable to put an arrestee who uses a
11 wheelchair in either the main wall -- I'll
12 rephrase.

13 Would it be preferable to put an
14 arrestee who uses a wheelchair in the main
15 holding area as opposed to chained to the rail
16 outside of the holding area?

17 MR. NOBLE: Objection.

18 You can answer.

19 A. If there were no prisoners and you
20 could afford to use that main holding cell for
21 one prisoner, and that prisoner was a
22 wheelchair-bound prisoner, then that would be
23 ideal. However, if you had three or four males
24 and security concerns, it's more practical to
25 put them in the one cell where you could ensure

1 ROBERT HALEY

2 period of time. And being that there are so
3 many variations and variables, and I don't know
4 the specifics of this case, I could not, you
5 know, speak to that, but what I can tell you is
6 that it is atypical to have any prisoner
7 handcuffed to a rail in excess of that many
8 hours.

9 Q. Capt. Haley, how do arresting officers
10 determine whether to provide medical or other
11 attention to people who use wheelchairs who
12 enter the 113th Precinct?

13 A. Based on the situation. If it were
14 readily apparent that they needed medical
15 attention. They're also -- when any prisoner is
16 brought into a New York City Police Department
17 facility for arrest processing, they're asked by
18 the desk officer, the desk officer assesses
19 their physical condition, and if they need or
20 it's determined that they need medical
21 treatment, if a prisoner requests medical
22 treatment, in my experience, that prisoner
23 receives medical treatment if they request it.

24 Q. And what if they don't request it, how
25 do officers at the 113th Precinct determine

1 ROBERT HALEY

2 whether a person needs medical treatment?

3 A. Like I mentioned, the desk officer
4 would be the person to make an assessment of the
5 physical condition of that prisoner and then
6 note that also in the command log with the entry
7 along with the prisoner's pedigree information.

8 Q. And how do they make that
9 determination?

10 A. That determination is based on -- on
11 their observation of the prisoner, the
12 prisoner's demeanor, the prisoner's, you know,
13 attentiveness, their -- whatever signs there
14 are, that that prisoner can also answer
15 questions as well. So it's more of a common
16 sense standard.

17 Q. So it's more of a common sense
18 standard than, say, a written policy, would that
19 be correct?

20 MR. NOBLE: Objection.

21 You can answer.

22 A. That's correct.

23 Q. Does the 113th Precinct have medical
24 personnel on-site?

25 A. Adjacent to the 113th Precinct is the